



August 10, 2000

Ms. Ruth H. Soucy
Deputy General Counsel
Open Records Division
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2000-3049

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137951.

The Comptroller of Public Accounts (the “comptroller”) received three requests for information from the same requestor, seeking information regarding Attorney General John Cornyn, Senator David Sibley, and Senator John Whitmire.¹ Specifically, the requestor seeks the “current home address, home telephone number, Texas Driver’s License number, Social Security Number, date of birth, amount of monthly salary, method of payment from public account(s) i.e., check or wire transfer,” and, if payments made by wire or electronic transfer, the “bank and account number to which the transfers were made[,]” for the above-named individuals. You indicate that you have released the requested dates of birth and monthly salaries. You contend that the remaining information responsive to the requests is made confidential under sections 552.101, 552.117, and 552.130 of the Government Code.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary

¹We note that the requestor initially submitted four requests for information, seeking also information relating to Senator Kenneth Armbrister. However, on August 10, 2000, this office was informed that the requestor submitted a withdrawal of his request for information as to Senator Armbrister only. Therefore, this ruling addresses only the information of Attorney General Cornyn, Senator Sibley, and Senator Whitmire.

sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

An individual's personal financial information may be excepted from required public disclosure under the common law privacy aspect of section 552.101. In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373. Whether the public has a legitimate interest in such information, however, must be determined on a case-by-case basis. *Id.* at 4; *see also* Open Records Decision Nos. 600 (1992), 545 (1990). In Open Records Decision No. 545 (1990), this office applied a similar presumption to personal financial information of public employees and held that, absent "special circumstances," information concerning a public employee's participation in a deferred compensation plan is protected from disclosure by common law privacy.

In our opinion, the information responsive to the part of the request asking for the "method of payment" is not protected by section 552.101, since all state employee officials are, absent special circumstances, required to receive their paychecks by direct deposit, and the fact of receiving payment by such method cannot be said to be "private." *See* Gov't Code § 403.016; Open Records Decision No. 600 (1992). The requested bank account information is, however, confidential, under the common law privacy aspect of section 552.101.

Sections 552.024 and 552.117 provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, and information that reveals that the individual has family members. Such information must be withheld if, as of the time of the request for the information, the employee has elected to keep the information private. Open Records Decision Nos. 530 (1989), 482 (1987), 455 (1987). You indicate that the comptroller's records show that prior to the date of the requests here, both Attorney General Cornyn and Senator Sibley had made the election under section 552.024 to prohibit the release of section 552.117 information. Accordingly, you must withhold the requested home addresses, home telephone numbers, and social security number information under section 552.117 for both Attorney General Cornyn and Senator Sibley.

However, you indicate that while Senator Whitmire signed an election form to protect his home address and telephone number, the election form pre-dates the 1995 amendment to

section 552.117 that allows public officials and employees to protect information about family members and social security numbers. Please note that whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a proper election must be made *prior* to the request for information. As you inform us that Senator Whitmire did not elect prior to the request to keep his social security number confidential under the current section 552.024, his social security number may not be withheld from public disclosure based on section 552.117.

We note that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.* *See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security number contained in the records at issue was obtained or is maintained by the comptroller pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the comptroller to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number at issue, you should ensure that the number was not obtained or is not maintained by the comptroller pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.130 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

To the extent that the responsive information contains Texas driver's license numbers, they must be withheld under section 552.130.

In summary, you must release the requested "method of payment" information for all four named officials, and the social security number of Senator Whitmire, if the number is not confidential under another provision of law. The comptroller must withhold the remaining requested information under sections 552.101, 552.117, and 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

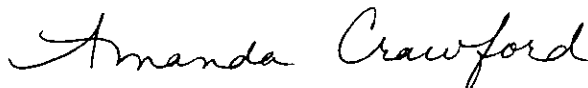
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/ljp

Ref: ID# 137964

Encl. Submitted documents

cc: Mr. Kenneth Bilhartz
6306 Echo Hill
San Antonio, Texas 78238
(w/o enclosures)